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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
Against:

13 **DEHYRL NIXON**
2621 Somerset Drive
14 Los Angeles, CA 90016

15 Respondent.

Case No. 4216

16 **STATEMENT OF ISSUES**

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about November 16, 2010, the Board of Pharmacy (Board) received an
22 application for Pharmacy Technician Registration from Dehryl Nixon (Respondent). On or about
23 November 3, 2010, Respondent certified under penalty of perjury to the truthfulness of all
24 statements, answers, and representations in the application. The Board denied the application on
25 October 17, 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

"(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

....

"(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code. "

13 6. Section 4300 provides in pertinent part, that every license issued by the Board is
14 subject to discipline, including suspension or revocation."

15 7. Section 4301 states, in pertinent part:

16 "The board shall take action against any holder of a license who is guilty of unprofessional
17 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
18 Unprofessional conduct shall include, but is not limited to, any of the following:

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20 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
21 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
22 whether the act is a felony or misdemeanor or not.

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24 "(l) The conviction of a crime substantially related to the qualifications, functions, and
25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
26 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
27 substances or of a violation of the statutes of this state regulating controlled substances or
28 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

1 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
2 The board may inquire into the circumstances surrounding the commission of the crime, in order
3 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
4 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
5 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
6 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
7 of this provision. The board may take action when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
10 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
11 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
12 indictment.

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14 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
15 violation of or conspiring to violate any provision or term of this chapter or of the applicable
16 federal and state laws and regulations governing pharmacy, including regulations established by
17 the board or by any other state or federal regulatory agency.

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19 "(p) Actions or conduct that would have warranted denial of a license."

20 **REGULATORY PROVISIONS**

21 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

22 "For the purpose of denial, suspension, or revocation of a personal or facility license
23 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
24 crime or act shall be considered substantially related to the qualifications, functions or duties of a
25 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
26 licensee or registrant to perform the functions authorized by his license or registration in a manner
27 consistent with the public health, safety, or welfare."

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of a Crime)**

3 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
4 that Respondent was convicted of a crime. On or about July 1, 2008, after pleading nolo
5 contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section
6 487, subdivision (a) [grand theft] in the criminal proceeding entitled *The People of the State of*
7 *California v. Dehryl Nixon* (Super. Ct. Los Angeles County, 2008, No. 8CP05905). The Court
8 sentenced Respondent to serve 13 days in Los Angeles County Jail and placed him on 36 months
9 probation, with terms and conditions. The circumstances surrounding the conviction are that on
10 or about June 23, 2008, while employed by Rite Aid in Los Angeles, CA, Respondent by his own
11 admission, admitted to stealing \$950 from the store safe.

12 **SECOND CAUSE FOR DENIAL OF APPLICATION**

13 **(Acts Involving Dishonesty, Fraud, or Deceit)**

14 10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
15 that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to
16 substantially benefit himself, or substantially injure another. Complainant refers to, and by this
17 reference incorporates, the allegations set forth above in paragraph 9, as though set forth fully.

18 **THIRD CAUSE FOR DENIAL OF APPLICATION**

19 **(Knowingly Made a False Statement of Fact)**

20 11. Respondent's application is subject to denial under section 480, subdivision (c), in
21 that on or about November 3, 2010, Respondent knowingly made a false statement of fact by
22 failing to disclose his conviction, on his application for licensure. In addition, Respondent signed
23 under penalty of perjury, under the laws of the State of California, that the forgoing was true and
24 correct, on his application for licensure. Complainant refers to, and by this reference
25 incorporates, the allegations set forth in paragraph 9, as though set forth fully.

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Warranting Denial of Licensure)**

3 12. Respondent's application is subject to denial under sections 4301, subdivision (p) and
4 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a
5 licentiate of the business and profession, would be grounds for suspension or revocation of his
6 license as follows:

7 a. Respondent was convicted of a crime substantially related to the qualifications,
8 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
9 or potential unfitness to perform the functions authorized by his license in a manner consistent
10 with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490,
11 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
12 and by this reference incorporates, the allegations set forth above in paragraph 9, as though set
13 forth fully.

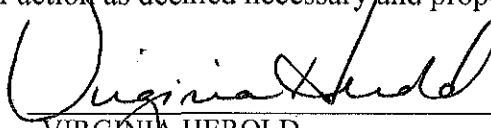
14 b. Respondent committed acts involving dishonesty, fraud, or deceit, in violation of
15 section 4301, subdivision (f). Complainant refers to, and by this reference incorporates, the
16 allegations set forth above in paragraph 9, as though set forth fully.

17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Board issue a decision:

- 20 1. Denying the application of Respondent for registration as a Pharmacy Technician;
21 and
22 2. Taking such other and further action as deemed necessary and proper.

23 DATED: 10/2/12

24 
25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

LA2011506075